



Gerard M. Gallagher
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Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Toll Free Assignment Modernization, Toll Free Service Access Codes
WC Docket #17-192*

Gentlemen / Ladies,

This letter is sent in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-mentioned proceeding in which the FCC proposes amending its current rules to allow for use of an auction to assign certain toll free numbers, including vanity numbers.

1-800-Flowers.com, Inc. (the "Company") is a leading floral and gift company in the United States. Over the years, 1-800-Flowers has invested hundreds and hundreds of millions of dollars in nationwide advertising to build brand awareness of its brand and trademark. The advertisements have appeared in or on telephone books, the internet, emails, television, billboards, newspapers, magazines, radio and direct mail. The FCC's own Notice prominently mentions the 1-800-FLOWERS brand.

The Company is the owner of the incontestable federally registered trademark 1-800-FLOWERS (Reg No. 1,009,717); which dates back to 1975. In addition, the Company is the owner of numerous other federally registered trademarks incorporating 1-800-FLOWERS.

The Company has long been the holder of the phone number 1-800-FLOWERS (1-800-356-9377). We also hold and use the toll free access codes associated with 356-9377 ("FLOWERS") in the 877 and 888 (visually close to 833) exchanges and also the common misspellings of our vanity phone numbers and other confusingly similar numbers of 1-800-FLOWERS and the other exchanges. The Company owns over 1000 domains incorporating 1-800-FLOWERS and variations thereof, as well as, hundreds related to the other exchanges related to "FLOWERS". In addition, we are also the owner of the trademark 1-888-FLOWERS (Reg. No. 1,811,143).

The Company has actively policed its trademarks against those seeking to poach on the goodwill that has been built in the 1-800-FLOWERS brand. We have experienced first-hand

third parties trying to improperly trade off our goodwill and/or who seek to deceive consumers into thinking their business was somehow affiliated with ours. These extensive efforts to protect the brand and to protect consumers from confusion came at a large expenditure of time and money to date and requires ongoing vigilance.

The Federal Lanham Act not only protects trademark owners, but also protects the public from and against the use of confusingly similar terms by third parties seeking to confuse the public or otherwise seeking to wrongfully benefit off the goodwill built up by the trademark owner. By prohibiting use of confusingly similar words and devices (such as a phone number), the Act helps ensure consumers are not unwittingly diverted to an unknown company, are able to differentiate among offerings from different companies, and are thereby able to make purchases from the companies whose brands they know and trust.

The Commission notes that it proposes to achieve a process that better promotes the equitable and efficient use of numbers. We submit that the equities should dictate that the vanity number be first offered to the trademark owner and not simply be put out to bid at auction. This is not only to protect the extensive and earned goodwill of the trademark owner who has built a successful business around a vanity number and related trademarks, but also to protect the public at large from unnecessary confusion and deception. We strongly urge that the Commission refrain from adopting an auction approach for the distribution of toll-free telephone numbers that are confusingly similar to marks protected by trademark law.

We respectfully submit that a change of Commission rules to allow for a publicized auction process will only increase the likelihood that third party speculators will seize upon the opportunity to acquire a vanity number confusingly similar to a brand and then seek to demand a large ransom from the trademark owners in exchange for a transfer of the number, or, in the alternative, to utilize the number in an effort to confuse consumers and/or damage the reputation of the trademark owner's company. This concern is supported by the significant increase of interest in the 833 exchange when vanity numbers (your Notice mentions 833-FLOWERS as a memorable vanity number) were initially floated at the FCC's direction. No benefit will be obtained through the auction process except for those seeking to benefit from the process at the expense of the trademark owners and the public. This is not pure speculation, 1-800-Flowers has experienced, and been forced to deal with, comparable situations in the past.

We submit that in lieu of an auction system that the FCC takes an approach similar to the method used by the International Corporation for Assigned Names and Numbers ("ICANN"), with respect to the release of any new internet Uniform Reference Locators ("URLs" or "domain names"). In the context of domain ownership, ICANN has acknowledged the public risk of bad faith domain registrations and has taken measures to help prevent cyber squatters from earning an unjust windfall through buying domain names that infringe rights of trademark owners. To prevent a problem, ICANN has implemented a "sunrise" process in which it allows trademark owners a period to reserve new URLs that are the same as, or similar to, their own trademarks. In essence, it offers a form of a "Right of First Refusal".


We respectfully submit that to protect the rights of trademark owners and to promote the public interest, the Commission should grant trademark holders a "Right of First Refusal" with respect to equivalent or confusingly similar telephone numbers and we believe that such a

process would afford a more equitable and efficient method for making the numbers available to the public.

1-800-Flowers certainly is supportive of the Commissions efforts to ensure that its distribution and management of toll-free numbers is carried out in an equitable and efficient basis. We submit that the employment of a "Right of First Refusal" process for toll-free numbers that are confusingly similar to marks protected by trademark law would be consistent with the goal of the Commission to ensure an equitable and efficient process.

Respectfully submitted,
1-800-FLOWERS.COM, INC.

BY:



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